

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Present:**

Ahmed Ali M. Shaikh, CJ  
Yousuf Ali Sayeed, J

**C. P. No. D-6132 of 2019**

Petitioner : Mohsin Jalil through Khalid  
Ahmed, Advocate.

Date of hearing : 25.03.2022

**ORDER**

**YOUSUF ALI SAYEED, J.** The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made by the IXth Additional District & Sessions Judge (MCAC) Karachi East on 03.08.2019 while dismissing Civil Revision No.22 of 2017 filed by the Petitioner against the Order passed by the IInd Senior Civil Judge Karachi (East) on 20.01.2017, dismissing his Application under Order XXXIX Rule 2 (3) CPC read with Section 3 & 4 of the Contempt of Court Act, 1976 (the “**Underlying Application**”) in Civil Suit No.396 of 2006 (the “**Suit**”).

2. A perusal of the Underlying Application reflects that the Petitioner had alleged that the Respondent No.3 had violated an Order made in the Suit on his Application under Order 39, Rules 1 and 2 CPC, by undertaking certain illegal construction on the premises that was the subject matter of the Suit, bearing Plot No. F-35, measuring 222 Sq. Yards, Survey No.70, situated in Al-Falah Housing Project, Malir Halt, Deh Drigh Tappo Malir, Karachi-43 (the “**Subject Property**”).

3. However, the Underlying Application came to be dismissed as the trial Court found that there was no order in the field restricting such activity in as much as the Application under Order 39 Rule 1 and 2 CPC had been allowed vide order dated 02.09.2009 only to the extent of restraining the defendants from creating any third-party interest in the Subject Property till the disposal of the Suit. After examining the matter, the Revisional Court too concluded that the approach of the fora below thus did not suffer from any illegality or irregularity, hence dismissed the Revision. The relevant excerpt from the order of the Revisional Court reads as follows;

“07. The perusal of record shows that the contempt application was filed during the pendency of execution application on the alleged violation of status-quo / injunction. It is settled principle of law that status-quo or injunction always runs in pursuance of main pleadings and prayers in suit but in the instant matter the construction issue was not part of the pleadings and prayer clause. Learned trial court rightly hold that the contents of decree reveals that plaintiff did not seek the injunction against construction over the suit property. It is matter of record that at the time of alleged contempt there was no restraining order pertaining to the construction was not in field. The restraining order dated 02.09.2019 passed by the trial court reveals that the court restrained the defendant No.2, 3 and 5 not to create third party interest, alienate, dispose of or transfer the property in question till the disposal of the instant suit. Moreover, undertaking by the defendant is also confined to the extent of third party interest till the disposal of suit. During the arguments learned counsel for the applicant has stated that the same judgment and decree in question have already been set-aside by the appellate court and case has been remanded back to trial court. Now, same suit is pending before the trial court for its fresh decision and execution application is no more pending before trial court.

08. In view of the discussion, I am of the opinion, trial court has not committed any irregularity and illegality while passing impugned order. The case laws placed by the learned respective counsel for the applicant does not attract the facts of the case in hand. Hence, in view of the above discussion, point No.1 is replied as negative.”

4. Indeed, a perusal of plaint reflects that the Suit was essentially one for specific performance based on sale agreement in respect of the Subject Property, and in that backdrop the prayer for permanent injunction was cast in the following terms:

“To restrain the defendants, their men and agents, servant and attorneys, administrators, executors and assigns and any other person or persons claiming and/or acting through or under them from parting with possession or creating third party interest in the Suit plot.”

5. Needless to say, the scope of any interlocutory application and order made thereon would stand circumscribed accordingly.
6. That it being so, we see no illegality or irregularity in the order of the Courts below, we dismiss the Petition *in limine* along with the pending miscellaneous applications.

Judge

Chief Justice

TariqAli/PA